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88- 1728

No.____

IN THE

SUPREME COURT OF THE UNITED STATES

ANITA SCHIRMER,

Petitioner

v.

EASTMAN KODAK COMPANY,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED

1. Should completion of informal intake questionnaire and charge of discrimination by former employee given to EEOC 164 days after termination satisfy requirement as to the prerequisite for bringing suit under Title VII when the EEOC fails thereafter to further process employee's claim and informs the employee that they will take no further action on the part of the employee?

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner, Anita Schirmer, prays that a writ of certiorari be issued to review the January 20, 1989, judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is not yet reported in the Federal Reporter. The relevant decision of the district court has not been published.

JURISDICTION

The judgment of the Court of Appeals was entered on January 20, 1989. This petition is being filed within 90 days of the entry of judgment.

This Court has jurisdiction to review the judgment of the Court of Appeals pursuant to 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves the following statutes and regulations:

Title 42, United States Code, Public Health & Welfare

42 U.S.C. 2000(e)-2. Unlawful employment practices

EMPLOYER PRACTICES

(a) It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applications for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. 2000(e)-5(e). Enforcement Provisions

Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with state or local agency

(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against

whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

Title 29, Code of Federal Regulations, Equal Employment Opportunity Commission

1601.6 Submission of information

(a) The Commission shall receive information concerning alleged violations of Title VII from any person. Where the information discloses that a person is entitled to file a charge with the Commission, the appropriate office shall render assistance in the filing of a charge. Any person or organization may request the issuance of a Commissioner charge for an inquiry into individual or systematic discrimination. Such request, with any pertinent information, should be submitted to the nearest District Office.

1601.7 Charges by or on behalf of person claiming to be aggrieved.

(a) A charge that any person has engaged in or is engaging in an unlawful employment practice within the meaning of Title VII may be made by or on behalf of any person claiming to be aggrieved. A charge on behalf of a person claiming to be aggrieved may be made by any person, agency, or organization. The written charge need not identify by name the person on whose behalf it

is made. The person making the charge, however, must provide the Commission with the name, address and telephone number of the person on whose behalf the charge is made. During the Commission investigation, Commission personnel shall verify the authorization of such charge by the person on whose behalf the charge is made. Any such person may request that the Commission shall keep his or her identity confidential. However, such request for confidentiality shall not prevent the Commission from disclosing the identity to Federal, State or local agencies that have agreed to keep such information confidential. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests for such information.

1601.12 Contents of charge; amendment of charge

(a) Each charge should contain the following: (1) The full name, address and telephone number of the person making the charge except as provided in 1601.7;

(2) The full name and address of the person against whom the charge is made, if known (hereinafter referred to as the respondent);

(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices: See 1601.15(b);

(4) If known, the approximate number of employees of the respondent employer or the approximate number of members of the respondent organization, as the case may be; and

(5) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State or local agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify and amplify allegations made therein. Such amendments and amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original charge will relate back to the date the charge was first received. A charge that has been so amended shall not be required to be redeferred.

1601.18 Dismissal: Procedure and authority

(a) Where a charge on its face, or as amplified by the statements of the person claiming to be aggrieved discloses, or where after investigation the Commission determines, that the charge and every portion thereof is not timely filed, or otherwise fails to state a claim under Title VII, the Commission shall dismiss the charge. A charge which raises a claim exclusively under section 717 of Title VII shall not be taken and persons seeking to raise such claims shall be referred to the appropriate Federal agency.

(e) Written notice of disposition, pursuant to paragraphs (a), (b), (c) or (d) of this section, shall be issued to the person claiming to be aggrieved and to the person making the charge on behalf of such person, where applicable; in the case of a Commissioner charge, to all persons specified in 1601.28(b)(2); and to the respondent. Appropriate notices of right to sue shall be issued pursuant to 1601.28.

1601.19 No cause determinations: Procedure and authority

(a) Where the field office completes its investigation of a charge and finds that there is not reasonable cause

to believe that an unlawful employment practice has occurred or is occurring as to all issues addressed in the determination or as to some but not all issues addressed in the determination, the issuing director shall issue a letter of determination to all parties to the charge indicating the finding. The issuing director's letter of determination shall not be final when issued. The letter of determination shall inform the person claiming to be aggrieved or the person on whose behalf a charge was filed of the right to request a review of the determination by the Commission. The person claiming to be aggrieved or the person on whose behalf a charge was filed may request a review of the issuing director's determination within 14 days of the date of the issuing director's determination by the Director, Determinations Review Program, Office of Program Operations, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, DC 20507. The issuing director's letter of determination shall inform the person claiming to be aggrieved or the person on whose behalf a charge was filed of the right to sue in federal district court within 90 days of the date that the issuing director's letter of determination becomes the Commission's final determination.

STATEMENT OF THE CASE

I. PROCEDURAL BACKGROUND

On June 16, 1986, Petitioner Anita Schirmer filed a complaint in the United States District Court for the Eastern District of Pennsylvania alleging that her former employer, respondent Eastman Kodak Company, had violated her rights as secured by Title VII Civil Rights Act of 1964, 42 U.S.C. 1981 et seq. The jurisdiction of the district court was invoked under sections of Title 29 of the United States Code.

Petitioner, Anita Schirmer, was hired by Eastman Kodak Company on June 13, 1983, as a switchboard operator. Petitioner was promoted to the position of dispatcher in 1983. On October 26, 1984, Anita Schirmer was constructively discharged.

The Petitioner went to the EEOC on April 8, 1985, 164 days after her discharge, and completed an intake questionnaire as well as discussing her charge of discrimination with the intake officer. Mrs. Schirmer went to the EEOC unrepresented by counsel. At the EEOC, Mrs. Schirmer alleged that she was discriminated against because of her sex and religion and in retaliation for opposing practices unlawful under the Civil Rights Act of 1964.

Mrs. Schirmer specifically alleged that in the Fall of 1983 she was subjected to harassment in the form of obscene telephone calls from another Eastman Kodak Company employee both on the job and at home. Mrs. Schirmer informed her employer, who failed to correct or address the issues presented to it. The telephone calls continued until her resignation. The Petitioner was denied the right to discuss her church choir while at work when no other employee was so restricted. Additionally, a supervisor made lewd remarks regarding his desire to become intimate with Petitioner.

On October 26, 1984, Mrs. Schirmer resigned from her job due to the incidents which had been occurring at work.

Mrs. Schirmer went to the EEOC on April 8, 1985, a period of 164 days after she left her employment. When Mrs. Schirmer went to the EEOC on April 8, 1985, she was interviewed by an EEOC worker, Ms. Pinkey Lucas. Mrs. Schirmer checked the block entitled "retaliation" when she filled out the documents at the EEOC.

Ms. Lucas then informed Mrs. Schirmer that the acts of which she complained were not acts of retaliation and, as such, the EEOC would not proceed with her charge and she should seek help elsewhere. Mrs. Schirmer believed at that time she had filed a charge before the EEOC even though the intake officer had informed her that subsequent action on her complaint would not proceed by the Commission.

Mrs. Schirmer did not receive any further communications from the EEOC and she thereafter obtained counsel. Subsequently, upon inquiry by Mrs. Schirmer, she learned five months later that the EEOC did not consider her filing on April 8, 1985, to be a formal charge and, as such, she had not perfected her claim with the EEOC. Mrs. Schirmer had then been out of work for nearly one year.

Mrs. Schirmer, after inquiries to the EEOC, returned to the EEOC on March 10, 1986, and filed a second intake questionnaire and also filed a formal charge alleging the same facts and issues as she did on April 8, 1985, but at that time checked the boxes labelled "sex," "religion" and "retaliation." She then requested a right to sue letter after she was informed by the EEOC on March 10, 1986, that her filing was untimely made.

A right to sue letter was then issued. Petitioner filed suit on June 16, 1986, alleging a violation of her civil rights pursuant to Title VII, 42 U.S.C. 2000(e) et seq.; 42 U.S.C. 1981 and 1982, and the First and Fourteenth

Amendments of the United States Constitution. Kodak moved to dismiss Mrs. Schirmer's complaint, alleging that her claims were not cognizable under 42 U.S.C. 1981 and 1982; and that Mrs. Schirmer's constitutional claims did not involve state action. Kodak further alleged that Petitioner's Title VII claims were barred because she had not timely filed a charge with the EEOC as mandated under Title VII, 42 U.S.C. 2000(e), et seq.

Schirmer answered the Motion to Dismiss stating that she did go to the EEOC within the 180 day period on April 8, 1985, and that the EEOC failed to process her claim although she believed that they had acted to perfect her claim at that time.

On April 9, 1987, by Memorandum and Order of the Honorable Louis H. Pollak, the trial court granted Kodak's Motion to Dismiss Mrs. Schirmer's claims pursuant to 42 U.S.C. 1981 and 1982, and her constitutional claims. The trial court reserved ruling on the untimeliness of the Petitioner's claims under Title VII until discovery could commence to determine whether Mrs. Schirmer had been prevented from asserting her rights before the EEOC, thus invoking the doctrine of equitable tolling.

Thereafter, discovery began to determine the issue of timeliness. On February 1 1988, Kodak filed a Motion for Summary Judgment with the District Court. The Petitioner responded to the Motion for Summary Judgment stating that the Petitioner had gone to the EEOC within 180 days and had filled out the necessary documents to constitute a filing of a charge. The Petitioner further alleged that she was unrepresented by counsel and the charge filed on March 10, 1986, was the same as the charge filed on April 8, 1985, except that different boxes had been checked on the form.

On June 13, 1986, the trial court granted Kodak's Motion for Summary Judgment, holding that the Petitioner's filing of April 8, 1985, was not sufficient to toll the 180 day period "even if [Mrs. Schirmer] was not then

aware that the EEOC had not in a technical sense filed charges for her."

The Plaintiff appealed the entry of the summary judgment to the United States Court of Appeals for the Third Circuit. The Third Circuit upheld the holding of the District Court and quoted an extensive portion of the trial court's opinion, including the portion quoted in the preceding paragraph.

The Third Circuit Court of Appeals did not consider the merits of the case since the issue before it was solely that of timeliness, and the trial court discovery order was only intended for purposes of timeliness.

II. FACTUAL BACKGROUND

Anita Schirmer is a Catholic woman who was hired by Eastman Kodak Company on June 13, 1983, and was assigned to the position of a switchboard operator. In the same year she was promoted to the position of dispatcher.

During the course of her employment with Eastman Kodak Company, Mrs. Schirmer became subject to harassing telephone calls from another employee both at home and on the job. She then advised her superiors of this problem and they failed to rectify the problem.

Mrs. Schirmer, a member of her church choir, would discuss her church activity on the job with co-employees who were interesed in her activity, but she was then informed that she could no longer continue these discussions at work.

In the Spring of 1984, Mrs. Schirmer was forced to retreat from a physical attack by a company equipment representative after he made lewd remarks regarding his desire to become intimate with her.

Mrs. Schirmer objected to this behavior and subsequently reported the incident in her letter of resignation.

Shortly after this incident, Mrs. Schirmer reported the incident to her superior who objected to the subject

of the incident being brought to the company's attention at a staff meeting. The company failed to correct his conduct.

Mrs. Schirmer resigned her position at Eastman Kodak Company on October 26, 1984. Thereafter, on April 8, 1985, she went to the EEOC without counsel to file a charge against her former employer arising out of the company's conduct towards her. The Petitioner was interviewed by a Ms. Pinkey Lucas, who told her that the EEOC was the incorrect organization for the relief which she desired. Ms. Lucas informed Mrs. Schirmer that she should go to a women's organization for the help which she sought.

Ms. Lucas told Mrs. Schirmer that her case "fell between the cracks," but that the EEOC would keep a record of her complaint.

Mrs. Schirmer filled out an intake questionnaire on April 8, 1985. Mrs. Schirmer believed that she had filed a charge on April 8, 1985, even when the EEOC representative stated at that time that the EEOC did not believe it would pursue her claim.

Mrs. Schirmer stated at her deposition that she had no idea that "in formality nothing was considered to have been done." The Petitioner filled out the intake questionnaire and requested that a charge of discrimination be filed on April 8, 1985.

Subsequently, Mrs. Schirmer became aware that her "charge" of April 8, 1985, was not considered a formal charge. Mrs. Schirmer had obtained counsel after April 8, 1985, but had no attorney with her on April 8, 1985.

Mrs. Schirmer learned in October of 1985, nearly a year after the job separation, that the EEOC had not acted on her charge filed on April 8, 1985. Mrs. Schirmer made further inquiries as to what occurred and, thereafter, returned to the EEOC on March 10, 1986, and was interviewed again by the same Ms.

Pinkey Lucas who interviewed her nearly a year before at her first conference.

Ms. Lucas, on March 10, 1986, again took the same information she had taken on April 8, 1985, but this time checked the boxes entitled "sex," "religion" and "retaliation." Ms. Lucas at this time advised Petitioner to seek assistance at the District Attorney's Office for the sexual assault. Ms. Lucas then informed the Petitioner that her charge would now be time barred for failure to file within 180 days.

Pinkey Lucas confirmed by letter, on May 22, 1986, that she had, in fact, interviewed Mrs. Schirmer on April 8, 1985, but that no formal charge had been filed.

The Petitioner requested a right to sue letter which was issued. The EEOC held that the charge of March 10, 1986, was not timely filed, even though Petitioner had been interviewed by the same intake officer who had filled out an intake questionnaire on April 8, 1985, a time period within 180 days after the loss of her job.

Ms. Lucas confirmed in her deposition that Mrs. Schirmer was interviewed and had "checked off the issue of retaliation" on her April 8, 1985, intake questionnaire. Ms. Lucas did not believe Mrs. Schirmer's allegations amounted to retaliation, but took no action to correct the technical defect of checking off the wrong box.

Mrs. Schirmer left the EEOC after the April 8, 1985, meeting believing that she had filed a charge and could thereafter file suit in the United States District Court. Mrs. Schirmer at all times desired to litigate the merits of her allegations, and returned to the EEOC on March 10, 1986, to obtain a right to sue letter so that she might commence litigation.

The Petitioner had intended to file a charge on April 8, 1985, and would not have left the EEOC on that date if she believed that her intake questionnaire and her interview were for informational purposes only. The trial court, as well as the Third Circuit, correctly held that

Mrs. Schirmer was not then aware that the EEOC on April 8, 1985, had not in a technical sense filed charges for her.

Mrs. Schirmer testified at her deposition that she believed her interview of April 8, 1985, was the basis of a formal charge, and she was not aware until nearly five months later that the EEOC did not officially file a charge on her behalf.

The EEOC intake officer confirmed that an intake sheet had been completed on April 8, 1985, and that it did not differ substantially from the intake sheet filled out on March 10, 1986.

At no time until after the 180 days had expired was Mrs. Schirmer even informed that her "charge" of April 8, 1985, was not technically filed.

REASONS FOR GRANTING THE WRIT

Among the many important cases competing for this Court's attention, this case stands out in its significance to the administration of civil justice in the Federal Court system for the reason that follows.

I. THE COURT SHOULD REVIEW THIS CASE TO RESOLVE THE INTERCIRCUIT CONFLICT REGARDING THE TOLLING OF THE 180 DAY PERIOD FOR FILING A CHARGE OF DISCRIMINATION WHEN THE INDIVIDUAL COMPLETES AN INTAKE QUESTIONNAIRE WITHIN THE 180 DAY PERIOD BUT THE EEOC FAILS TO PROCESS A FORMAL CHARGE.

In granting the employer-company's Motion for Summary Judgment, the Court of Appeals concluded that the Petitioner's failure to have technical charges filed on her behalf by the EEOC within 180 days after job loss time barred any claim presented to the District Court. In addition, the Court of Appeals held that the Petitioner may not have been aware at the time of her

filing on April 8, 1985, 164 days after job loss, that a charge on her behalf had not been technically filed by the EEOC.

This holding directly conflicts with that of the United States Court of Appeals for the Eleventh Circuit in *Clark v. Coats & Clark, Inc.,* No. 88-8339 decided on February 16, 1989; *Casavantes v. California,* 732 F.2d 1441 (9th Cir. 1984); *Price v. Southwestern Bell Telephone Co.,* 687 F.2d 74 (5th Cir. 1982). The Eleventh Circuit wrote in *Clark, supra:*

> According to the facts described above, the informal intake questionnaire which Clark completed was received by the commission within 152 days after Clark's termination, and the Commission's Notice of Charge of Discrimination was mailed to Coats & Clark 172 days after Clark's termination. The parties agree that these events transpired within 180 days of Clark's termination.
>
> The formal charge prepared by the EEOC was signed by Clark 202 days after the termination, and was received by the Commission 209 days after the termination.

The *Clark* Court, after setting forth the above factual scenario, stated:

> In the case *sub judice,* the informal intake questionnaire fulfilled all of the objectives desired by Congress in enacting section 626(d)(1). The questionnaire was in writing and described the action which Clark believed to be discriminatory.

Although the *Clark* opinion deals with an age discrimination issue pursuant to 29 U.S.C. 626(d)(1), the basic fundamentals of the congressional intent, that a charge shall be in writing and shall name the prospective respondent and shall generally allege the discriminatory acts, does not substantially differentiate between

a claim alleged under the Age Discrimination in Employment Act, 29 U.S.C. 601, et seq., and a claim pursuant to Title VII, 42 U.S.C. 2000(e), et seq.

This Court can take notice that the intake form employed by the EEOC, EEOC Form 5 of March of 1984, is the same form used for both age claims and Title VII claims. The information obtained by an EEOC intake officer is essentially the same for all cases and varies only as to each particular factual pattern.

The Third Circuit, in the opinion at issue herein, cited two other Third Circuit opinions in confirmation of its holding, as well as the Second Circuit opinion of *Smith v. American President Lines, Ltd.*, 571 F.2d 102, 109 (2nd Cir. 1978). These Third Circuit opinions, as well as the Second Circuit opinion, are in conflict with the opinions cited by Petitioner hereinbefore.

The Third Circuit adopted the opinion of the trial court and specifically quoted the following:

> The sum of it is that Mrs. Schirmer waited almost 180 days before going to the EEOC in the first place. And then after retaining counsel, she waited an additional four months, plus, before returning to the EEOC to establish her entitlement to pursue litigation here.
>
> Given that the plaintiff was aware, certainly by two weeks after her first interview in April of 1985, that nothing further was going to be done by the EEOC – even if the Plaintiff was not then aware that the EEOC had not in a technical sense filed charges for her – and given that the Plaintiff, as of October 1985, had retained experienced counsel, the failure to resort to the EEOC for yet another four months plus from the date of the retainer onward deprives this use of any claim of being one of that very small category of cases, which, for "extraordinary" reasons, there is ground for invoking a doctrine of equitable tolling.

There exists no dispute that the Petitioner went to the EEOC within 180 days after her job loss, filled out an intake interview sheet, and met with an intake officer, a Ms. Pinkey Lucas. The trial court, as well as the Third Circuit Court of Appeals, agree that the Petitioner may not have been aware that she did not have a technical charge filed on her behalf within 180 days. It is further undisputed that only after 180 days did Mrs. Schirmer become aware for the first time that the EEOC did not completely process her charge.

The Third Circuit completely disregards the essential fact that the Petitioner did go to the EEOC within 180 days subsequent to her job loss and, solely as a result of the EEOC's actions, she did not complete a formal charge. At all times Mrs. Schirmer believed that she had fulfilled the technical requirements of the EEOC charge process.

The information necessary to initiate a charge is sufficiently met if the EEOC intake questionnaire meets the requirements of containing the full name, address and telephone number of the person making the charge; the full name of person against whom the charge is made; a clear concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices; if known, the approximate number of employees of the employer; and, whether state action has occurred. *Steffen v. Meridian Life Insurance Co.,* 859 F.2d 534 (7th Cir. 1988); See *Foster v. National Bank,* 857 F.2d 1058 (5th Cir. 1988).

The *Clark, supra,* opinion states that purpose of filing is to provide the EEOC with sufficient information to notify a defendant of wrongdoing, with an opportunity to eliminate unlawful practices through informal conciliation.

In the instant action it is undisputed that the Petitioner filed an intake interview sheet which contained all of the above information on April 8, 1985. The intake interview sheet was not reduced to a formal

charge by the action of the EEOC intake officer and her superior. The actions of the intake officer and her superior in not reducing Mrs. Schirmer's complaint to a charge was done without the permission or knowledge of the Petitioner.

According to the Third Circuit, the failure attributed to Mrs. Schirmer which did not allow her to proceed was that the intake interview occurred on the 164th day. The Third Circuit specifically states that Mrs. Schirmer's post-180 day conduct prevented her from proceeding in this action.

The Third Circuit fails to consider the pre-180 day conduct. If Mrs. Schirmer's conduct should be reviewed, it should be reviewed as to the pre-180 day circumstances only. Sufficient case authority exists which states that if an intake interview is completed prior to the 180th day, the period has been tolled for filing a charge before the EEOC.

The respondent conceded in its brief to the Third Circuit that there does exist authority to allow a charge to proceed if only an intake questionnaire has been filled out by a complainant. The respondent attempts to dilute that statement by stating "[w]hile Courts have in rare and specific situations found that an Intake Questionnaire is sufficient to satisfy the requirement that a charge be filed, Schirmer's circumstances do not warrant such a finding."

The facts of this case are unique, but the legal principles involved are of a great importance to the United States labor force of men and women. This is an unusual factual pattern where a complainant sought the assistance of the EEOC and was misled into believing that she had done all the necessary actions to complete a formal charge. Subsequently, she learns that the EEOC failed to act upon her charge and is forced to again file with the EEOC after 180 days, the identical paperwork filed prior to 180 days.

The failure of the Petitioner herein was in checking the wrong box. No factual allegation changed between April 8, 1985, and March 10, 1986. The only change was the administrative detail of checking off a particular box on a form.

Therefore, the issue is whether an administrative decision by the EEOC can prevent a person from having a charge processed, and thereafter prevent that individual from filing a civil action to redress wrongs in the Federal Courts. The action of the EEOC in the present case is that of judge and jury. The allegations brought by the Petitioner to the EEOC were sufficient on their face for a charge to be processed, but for the checking of a box. The Third Circuit opinion does not go to the merits of this action and the merits need not be discussed here. The Petitioner's initial intake interview form contained sufficient information to allow a filing of a technical charge.

The logic for the authority which allows an intake questionnaire to act as a charge for the purposes of tolling the 180 days is most evident in this petition.

Those appellate opinions which hold that completion of an intake interview form acts as a tolling of the 180 day period are best exemplified by the instant factual pattern. The Third Circuit opinion does not deal with any findings of fact prior to the 180 days, but discusses in great detail the Petitioner's post-180 day conduct. The Third Circuit does not dispute the record below that the Petitioner had taken all necessary steps on her own behalf, prior to the 180th day, to have a charge filed by the EEOC.

The Third Circuit does not discuss the factual record as it relates to the processing of the intake questionnaire completed prior to 180 days. If the Third Circuit had adopted the holding in *Clark, supra,* and those circuits in agreement with *Clark* such as in *Foster v. National Bank, supra,* the area of factual inquiry in

this case would be limited and the issue of timeliness easily resolved.

The use of equitable tolling, as employed by the Third Circuit, creates additional discovery and application of equitable principles, rather than an objective finding, as employed by several circuits, when the issue is reduced to that of whether an intake questionnaire had been properly filled out with the requisite information.

The Petitioner herein is not stating that the test of equitable tolling would cease if the Third Circuit opinion is held to be inappropriate. The Petitioner is submitting that an objective standard is proper and is the only logical test when the issue of tolling of the 180 days centers around the filing of an intake interview form.

The Court, in *McKee v. McDonnell Douglas Technical Service Company,* 700 F.2d 260 (5th Cir. 1983) held:

> EEOC regulations do not vest commission officials with discretion to turn away complainants. 29 C.F.R. 1601.6 . . . Nowhere is the commission given discretion to refuse a valid allegation of a Title VII violation except that "[a] charge which raises a claim exclusively under Section 717 of Title VII [42 U.S.C. 2000(e)-16 (1976)] shall not be taken and referred to the appropriate agency." 29 C.F.R. 1601.19 (1980).

The *McKee* Court cited an Eighth Circuit opinion:

> The Eighth Circuit applied the same precept in *Jennings v. American Postal Worker's Union*, 672 F.2d 712 (8th Cir. 1982), in which the plaintiff alleged that the EEOC refused to accept her complaint on the ground that it lacked jurisdiction over the charge, and the defendant asserted her later-filed complaint should be dismissed as untimely. The court held that, if the district court found that the facts alleged by the plaintiff were true, "her

> charge should be deemed timely. An uncounseled plaintiff should not be penalized for the EEOC's mistake of laws." Id. at 715.

McKee, supra, at 264.

In the *McKee* opinion the Fifth Circuit Court of Appeals remanded the action for further proceedings to determine if equitable tolling had applied. In the *McKee* case, the issue apparently centered around the EEOC's refusal to accept the charge as a result of the party's inability to present sufficient facts to allow the EEOC to acquire jurisdiction.

McKee is supportive of the Petitioner's position. The EEOC in this instance did not accept jurisdiction as a result of a mislabeling of a box rather than outright denial based on factual circumstances. This is borne out by the EEOC accepting Petitioner's same charge, when subsequently filed on March 10, 1986. The reason for rejection by the EEOC of the subsequently filed charge was untimeliness and not lack of factual allegations.

In *McKee*, the court remanded to determine whether equitable tolling should apply when a charge is rejected by the EEOC. Equitable tolling need not be considered here as a result of the EEOC subsequently accepting that same charge which they had initially rejected because of a procedural error in marking the wrong box.

The EEOC regulations state the following:

> A charge may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify and amplify allegations made therein. 29 C.F.R. 1601.12(b) (1979).

The Third Circuit refuses to adopt the EEOC regulation by avoiding the factual issues surrounding the filing of the intake interview sheet on April 8, 1985, 164 days after job loss. The Third Circuit does not address the factual allegations of the Petitioner that for the sake

of a technical defect, a mismarked box, the EEOC declined jurisdiction.

In addition to the above errors of logic and application of law which the Petitioner submits to this Court, the Petitioner submits that the Third Circuit, the trial court, and counsel for respondents failed to address the error of the EEOC in not applying the EEOC's own rules as contained in the Code of Federal Regulations.

Any "person is *entitled* to file a charge with the Commission" when an individual makes a claim of a violation of their civil rights under Title VII. (emphasis supplied). 29 C.F.R. 1601.6(a). That Code section further states that "the appropriate office shall render assistance in the filing of the charge." Therefore, the filing of a charge is not a discretionary act of the EEOC but is, rather, an obligation of the EEOC.

The respondent argued below that if the EEOC were forced to accept all employee allegations of Title VII violations as charges, the EEOC would be inundated with spurious claims causing it to become ineffective and burdened beyond its capacity. The Third Circuit did not address this argument in its opinion. The Third Circuit could not address this proposition since it is contrary to the regulations of the EEOC.

The EEOC must accept a charge at the time of filing. 29 C.F.R. 1601.6(a).

If the EEOC obtains sufficient information from the individual seeking relief before it, a charge must be issued. 29 C.F.R. 1601.12(a)(b). There exists no issue in this case that the Petitioner presented sufficient facts to the EEOC for the EEOC to issue a charge against the respondent company. The intake interview form of March 10, 1986, contained the identical information as the intake interview form completed on April 8, 1985, 164 days after job termination. The Petitioner satisfied the requirements of the "content of charge" provision of the EEOC regulations prior to the expiration of the 180 days set forth in 42 U.S.C. 2000(e)-5(e).

The Commission has the right to dismiss a charge when "on its face . . . the charge . . . fails to state a claim under Title VII." 29 C.F.R. 1601.18(a). 29 C.F.R. 1601.18(a) therefore directly impacts on the issue before the Third Circuit. If a charge on its face is insufficient, it should be dismissed pursuant to the regulations and not ignored as the evidence below shows without contradiction.

Pinkey Lucas stated that the EEOC would not proceed on the Petitioner's charge and the respondent argued that the Petitioner knew the charge was not going to be acted upon, and it was incumbent on the Petitioner thereafter to further proceed by returning to the EEOC. The Third Circuit agreed. This is *not* the law. The Code of Federal Regulations deals directly with this point.

Where the EEOC makes written notice of the dismissal of the charge for failure to state a prima facia claim, the Petitioner is to be issued a "no cause determination" letter. 29 C.F.R. 1601.18(e); 29 C.F.R. 1601.19(a). In the present action the EEOC never issued a "no cause" letter from the April 8, 1985, interview. The Petitioner had an absolute right to a "no cause" letter so that she could thereafter invoke other provisions of the EEOC regulations which would allow her to proceed to court.

The "right to sue" letter has a specific box for "other" action by the EEOC, which has space to insert the explanation for the dismissal of the charge. The EEOC was obligated on April 8, 1985, to issue a "no cause" letter to Petitioner so that she could proceed with her claim, or, in the alternative, amend the improperly marked boxes so that she could proceed accordingly. 29 C.F.R. 1601.12(b). It was incumbent upon the intake officer, Pinkey Lucas, to assist Mrs. Schirmer in drafting a valid charge or, at the least, checking off the appropriate boxes. 29 C.F.R. 1601.6(a). If Ms. Lucas felt thereafter that a charge still was not warranted, she could

have issued a "no cause" determination as well as a "right to sue" letter. 29 C.F.R. 1601, et seq.

The failure of Ms. Lucas to accept a charge is a violation of the EEOC regulations. The Petitioner believed that she had filed a valid charge within 180 days, as is evident from the opinion of the Third Circuit Court of Appeals.

The Petitioner had no obligation to return to the EEOC after her initial filing within 180 days. It was the obligation of the EEOC to inform Mrs. Schirmer in writing that they would take no further action. The EEOC never did so. The burden on the EEOC to do as directed by its regulations would create no greater burden on the EEOC than issuing a "no cause" form letter. This adherence to the regulations would not bring the activities of this government agency to a crawl.

The Third Circuit and trial court absolutely ignored the Code of Federal Regulations in their opinions. The Commission was obligated to accept Mrs. Schirmer's charge.

The Third Circuit's opinion and prior holdings are not consistent with the regulations which the Congress enacted to govern the EEOC in Title VII claims. The Third Circuit must apply the acts of Congress as intended and cannot create an independent test which deprives a person of a right enumerated by an act of Congress.

The Third Circuit stands in conflict with those other circuits named in this petition, as a direct result of the Third Circuit failing to apply the law as promulgated. The Third Circuit had regulations before it which it chose to ignore.

This Court must reverse the Third Circuit findings in order to align the Third Circuit with those circuits which hold that a filing of an intake interview sheet constitutes a charge, as well as to bring a uniformity of law throughout all of the Circuit Courts of Appeal.

An adoption by this Court of the objective standard that a filing of an intake interview sheet complying with the EEOC regulations and the intent of Congress, would eliminate unjust results, and would eliminate the denial of court determination of employees' claims of unjust and unfair treatment in the workplace.

In upholding the district court's granting of Summary Judgment, the Third Circuit concluded that a filing of an intake interview sheet, which is in accordance with the EEOC enabling legislation, is insufficient to toll the 180 day filing period. As a result, the Third Circuit is in conflict with the Fifth, Eighth, Ninth and Eleventh Circuits in the cases discussed above in which the courts stated that a filing of an intake interview form tolls the 180 day filing period.

The Third Circuit's opinion does not address those other circuits nor does it in any manner attempt to explain why a filing of an intake interview form within 180 days fails to satisfy the filing requirements of the EEOC which would allow the Petitioner to have her allegations brought before the Court for a determination on the merits.

This Court should grant this Petition for Writ of Certiorari in order to resolve the conflict among the circuits as to what circumstances justify the tolling of the Title VII administrative statute of limitations, and to determine whether the Third Circuit erred in affirming the district court's granting of respondent's Motion for Summary Judgment. A resolution of the conflicts among the circuits would resolve uncertainty and reduce litigation over this issue.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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Attorneys for Petitioner

DATED: April 20, 1989

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 88-1544

ANITA M. SCHIRMER,

Appellant,

v.

EASTMAN KODAK COMPANY,

Appellee.

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 86-3533)
District Judge: Honorable Louis H. Pollak

Submitted under Third Circuit Rule 12(6)
January 9, 1989

Before: HIGGINBOTHAM, COWEN, and ALDISERT,
Circuit Judges.

(Filed: January 20, 1989)

MEMORANDUM OPINION OF THE COURT

ALDISERT, *Circuit Judge.*

The question for decision is whether the claim of Anita M. Schirmer under Title VII of the Civil Rights Act of 1964 is barred because she did not timely file her claim. The district court held that it was time barred. Alternatively, the court concluded that even if the merits were to be reached, appellant did not set out an adequate cause of action under Title VII. We affirm the judgment

of the district court on the issue of timeliness and do not reach the merits.

Schirmer alleges that Kodak discriminated against her because she is a Catholic and because she is a woman, thus contending both religious and gender discrimination. She alleges that as a result of this discrimination, she was forced to resign her position as a part-time telephone operator, on October 26, 1984. On April 8, 1985, Schirmer went to the Equal Employment Opportunities Commission (EEOC) to file a claim. The EEOC advised Miss Schirmer that it was not going to proceed on her claim and referred her to other agencies. On March 10, 1986, over 16 months (or 480 days) after her resignation she went back to EEOC and filed a charge. The commission promptly issued a Notice of Right to Sue, but determined that Schirmer did not comply with the 180-day limit for filing a complaint.

Schirmer then instituted this suit against Kodak. In her complaint she alleged a Title VII claim, which is before us, as well as claims under the First and Fourteenth Amendments, which were dismissed by the trial court. No appeal has been taken from the determination on the constitutional issues.

The trial judge, Louis H. Pollak, delayed action on a summary judgment motion on timeliness until discovery was completed. Upon completion of discovery, the judge entered judgment for Kodak. Schirmer appeals.

We are satisfied with the reasons set forth by the trial court in dismissing the claim for want of timeliness:

> [T]he record persuades me that Miss Schirmer did not know that no formal action, whatsoever, was taken by the EEOC to receive and docket her charges. On the other hand, the record also shows that the plaintiff was aware that the EEOC as of April of 1985 was not going to proceed with her charges, and that she would have to look in other directions.

In the winter and spring of 1985, Miss Schirmer was without counsel. She spoke to lawyers who talked to her about the case, but declined to pursue it on her behalf.

As of October 1985, Miss Schirmer retained her present counsel, and there then followed a period of over four months before the plaintiff again returned to the EEOC, discovered unequivocally that no charges had been filed before, and asked the EEOC to issue a Right to Sue Letter after the EEOC formally took cognizance of and then dismissed the charges.

The sum of it is that Miss Schirmer waited almost 180 days before going to the EEOC in the first place. And then after retaining counsel, she waited an additional four months, plus, before returning to the EEOC to establish her entitlement to pursue litigation here.

Given that the plaintiff was aware, certainly by two weeks after her first interview in April of '85, that nothing further was going to be done by the EEOC – even if the plaintiff was not then aware that the EEOC had not in a technical sense filed charges for her – and given that the plaintiff, as of October 1985, had retained experienced counsel, the failure to resort to the EEOC for yet another four months plus from the date of the retainer onward deprives this case of any claim of being one of that very small category of cases in which, for "extraordinary" reasons, there is ground for invoking a doctrine of equitable tolling.

Record of Proceedings on June 13, 1988, *Schirmer v. Kodak Co.* (No. 86-3533), reprinted at A. 12-13.

The court's decision is consistent with the case law. *See School Dist. of Allentown v. Marshall,* 657 F.2d 16, 20 (3rd Cir. 1981); *Hart v. J.T. Baker Chem. Co.,* 598

F.2d 829 (3d Cir. 1979), *citing Smith v. American President Lines, Ltd.*, 571 F.2d 102, 109 (2d Cir. 1978). We are satisfied with the court's disposition.

We have considered all the contentions of the appellant. The judgment of the district court will be affirmed in all respects.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 88-1544

ANITA M. SCHIRMER,

Appellant,

v.

EASTMAN KODAK COMPANY,

Appellee.

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 86-3533)
District Judge: Honorable Louis H. Pollak

Before: HIGGINBOTHAM, COWEN, and ALDISERT,
Circuit Judges.

JUDGMENT

This cause came on to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted under Third Circuit Rule 12(6) on January 9, 1989.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the District Court entered July 13, 1988, be and the same is hereby affirmed.

Costs taxed against appellant.

Attest:

SALLY MRVOS
Clerk

January 20, 1989

Certified as a true copy and issued in lieu of a formal mandate on February 13, 1989

Test: M. ELIZABETH FERGUSON

Chief Deputy Clerk, United States Court of Appeals for the Third Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANITA M. SCHIRMER : CIVIL ACTION
NO. 86-3533

vs.

EASTMAN KODAK COMPANY : Philadelphia, Pennsylvania
June 13, 1988

BEFORE THE HONORABLE LOUIS H. POLLAK, J.
UNITED STATES DISTRICT JUDGE

Appearances

FOR THE PLAINTIFF: THEODORE Q. THOMPSON, ESQUIRE
10 North Main Street
Ambler,
Pennsylvania 19002

FOR THE DEFENDANT: JEROME A. HOFFMAN, ESQUIRE
3400 Centre Square West
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Pennsylvania 19102

Proceedings recorded by machine shorthand:
transcript produced by computer.

GREGG B. WOLFE, R.P.R.
Official Court Reporter
601 Market Street, Room 2722
Philadelphia, Pennsylvania 19106
(215) 925-6409

but I think the words are all there.

THE COURT: That's your understanding, too, Mr. Thompson?

MR. THOMPSON: Yes, sir, Your Honor.

THE COURT: I thank you. That helps me.

I'm prepared to rule on this matter.

The litigation before the Court today has its inception in an adversary sense, in April of 1985, when plaintiff Schirmer went to the EEOC and had an intake interview in which she filled out the intake questionnaire, which appears as Exhibit N to defendant's motion for summary judgment. The EEOC staff person, Pinky Lucas, who interviewed Miss Schirmer, after consultation with her supervisor, did not file a formal charge on Miss Schirmer's behalf. She advised Miss Schirmer that the EEOC was not going to proceed, and Miss Schirmer was referred to other agencies, the Labor Board. Pennsylvania Human Relations Commission, and WAJE.

It is Miss Lucas' testimony that she told Miss Schirmer that no charge was being filed. Miss Schirmer understood, on the basis of that conversation and a telephone conversation with Miss Lucas perhaps two weeks later, that the EEOC was not going to proceed, but, according to Miss Schirmer's testimony, she was unaware that in formal terms the EEOC did not regard the case as one which charges had been filed.

Miss Schirmer was uncounseled at that time. She subsequently spoke to a series of lawyers, none of whom took her case until she came to Mr. Thompson, who had represented her since October 1985.

The gravemen of Miss Schirmer's case was that her resignation from employment at Kodak, the defendant in this action, in October of 1984, was, in effect, a forced resignation, a firing, and that the stimulus for the firing was discrimination violative of Title VII, and various sections of the Federal Civil Rights Act and the Constitution.

Miss Schirmer returned to the EEOC in March of 1986, somewhat over four months after she had retained Mr. Thompson. At that time, she learned that no charge had been filed on her behalf by the EEOC. EEOC, in March of '86, filed charges for the purpose of giving the matter some formal EEOC status, and then forthwith

issued as Miss Schirmer requested, a Right to Sue Letter, having dismissed the charges on the grounds of untimeliness.

This litigation ensued. The defendant thereafter moved for summary judgment on grounds of untimeliness, and moved to dismiss on the grounds of untimeliness and with respect to certain of the claims as not being legally viable.

I dismissed the claims under the Federal Civil Rights Acts, Sections 1981, 82 and 83 as not cognizable, since the claims were of sexual and religious discrimination, which were not viable under 1981 and 1982, and the 1983 claim, there being no state action, and the asserted direct constitutional claim fell away on those grounds.

With respect to the timeliness issue, I denied the motion to dismiss pending discovery to find out more about the context of the April '85 and March '86 attempts to invoke the assistance of the EEOC. That discovery has now been had, and motion for summary judgment now before the Court again invokes the timeliness issue, and also contends that the claims of sexual and religious discrimination are not viable on the merits.

With respect to the timeliness problem as it now appears, discovery having been accomplished, Miss Schirmer's first attempt to invoke the aid of the Equal Employment Opportunity Commission took place some five and-a-half months after her resignation, which she claims to have been a constructive discharge.

Assuming that the various allegedly discriminatory acts which Miss Schirmer complains of, and said to have accrued at the point of discharge, her resort to EEOC was within two weeks, approximately, of the 180 days within which, under Title VII, a charge must be filed as a predicate to invocation of the EEOC's assistance. And if no help is gotten from that, ultimate invocation of the jurisdiction of federal court.

When the matter of timeliness was considered before, I declined defendant's invitation to conclude that plaintiff was out of court for the reason that no formal charge had been filed in March of '85. I concluded that discovery was in order to determine whether this was one of those unusual cases in which, within the language of the authorities, there were extraordinary reasons precluding the plaintiff or curtailing the plaintiff from pursuing her administrative remedy in timely fashion, so that a doctrine of equitable tolling might come into play, operating to forgive the delay in filing, which, in the event, meant that no formal charges, as the EEOC understood them, were filed until March of 1986, some 16 to 17 months after the plaintiff's resignation from Kodak.

As I have noted, the record persuades me that Miss Schirmer did not know that no formal action, whatsoever, was taken by the EEOC to receive and docket her charges. On the other hand, the record also shows that the plaintiff was aware that the EEOC as of April of 1985 was not going to proceed with her charges, and that she would have to look in other directions.

In the winter and spring of 1985, Miss Schirmer was without counsel. She spoke to lawyers who talked to her about the case, but declined to pursue it on her behalf.

As of October of 1985, Miss Schirmer retained her present counsel, and there then followed a period of over four months before the plaintiff again returned to the EEOC, discovered unequivocally that no charges had been filed before, and asked the EEOC to issue a Right to Sue Letter after the EEOC formally took cognizance of and then dismissed the charges.

The sum of it is that Miss Schirmer waited almost 180 days before going to the EEOC in the first place. And then after retaining counsel, she waited an additional four months, plus, before returning to the EEOC to establish her entitlement to pursue litigation here.

Given that the plaintiff was aware, certainly by two weeks after her first interview in April of '85, that nothing further was going to be done by the EEOC – even if the plaintiff was not then aware that the EEOC had not in a technical sense filed charges for her – and given that the plaintiff, as of October of 1985, had retained experienced counsel, the failure to resort to the EEOC for yet another four months plus from the date of the retainer onward deprives this case of any claim of being one of that very small category of cases in which, for "extraordinary" reasons, there is a ground for invoking a doctrine of equitable tolling.

The applicable case authority is referred to at pages four and five of my memorandum of April 9, 1987. In particular, the cases that are controlling in my judgment are the School District of Allentown versus Marshall, 657 F.2d 16 at 20, a Third Circuit decision in 1981, and a 1978 decision of the Second Circuit, Smith versus American President Lines, Ltd., 571 F.2d 102, 109.

So for these reasons, I conclude that the defendant's motion for summary judgment must be granted. One cannot be entirely happy about dismissing charges of this nature; indeed, of any nature on timeliness grounds. This is not to say that statutes of limitations would not have their appropriate place in our jurisprudence. It is simply that one cannot help but feel that if a complaint is meritorious, whatever the nature of the civil proceeding may be, it is unfortunate when the merits are unable to be pursued because of a failure on the plaintiff's part to press her/his case expeditiously.

With that in mind, I would simply say briefly that I have also explored, so far as this record permits on summary judgment, the merits of this case. Were I to conclude that the merits were before me, and I conclude that they are not because of the timeliness problem, but were I to conclude that the merits were before me, I would be of the further view that Miss Schirmer's case fails on the merits at this summary judgment stage.

First of all, the claims of religious discrimination could not be before me even if I thought that equitable tolling permitted some part of Miss Schirmer's case to survive. I say that because Miss Schirmer's grievances as presented to the EEOC in April of 1985 said not a word about religious discrimination. That is an afterthought which did not appear at all until March of 1986.

With respect to the issues of sexual discrimination, my judgment on the merits is this. The record clearly establishes, in my view, that to the extent that the plaintiff alleged a hostile work environment, the core of that hostile work environment, as perceived by the plaintiff, was the set of conditions created, as plaintiff saw it, by her co-workers Joanne Fidure and Corinne Thorell.

Indeed, in the plaintiff's affidavit attached to her response to the motion for summary judgment, Miss Schirmer says paragraph 17, "The reason for my resignation was the harassment, the hang-up calls and hostile behavior of Joanne and Corinne that was allowed to continue uninhibited by the defendants. Mr. Gerding, in an earlier setting, raised his hand and arm with finger pointing at me in a swinging fashion and was screaming at me when I went to him for help. He was obviously hostile to me and the complaints that I was raising."

The difficult environment to which Miss Fidure and Miss Thorell contributed to do not add up to sexual discrimination or harassment. They may add up to unpleasantness of a sustained and difficult kind, but not to a problem of work environment cognizable under the statute.

To the extent that plaintiff was concerned about those male co-workers who verbally and/or physically made advances to her at one or another time, it appears that the one stained, and evidently substantial set of approaches of this very obnoxious kind, was at the hands of co-worker Don Smith.

And it further appears on the record made on this motion for summary judgment that when Kodak was apprised of Don Smith's behavior, he was suspended without pay for five days, a discipline which led Smith to resign.

In short, it becomes clear that Kodak dealt with the one significant event of sexual harassment by a male co-worker, which came to Kodak's attention. There is nothing else in the record that I can see that would be a basis for a plausible claim of sexual discrimination, except arguably – I don't think substantially – the drunken verbal statements by co-worker John Todd at some company party, that he would like to be alone with the plaintiff, an observation which he appears to repeat many times that same evening.

I say arguably that might be thought to give some ground to plaintiff's complaint for the reason that, according to plaintiff's deposition testimony, she did mention Todd to a Kodak supervisor at some point. It was her impression that he did not believe her – did not take seriously what she was saying about Todd. Suffice it to say, it would be left with the drunken Todd as the entire ground for a case of sexual discrimination in the face of the totality of the record which I tried briefly to summarize and highlight, specifically plaintiff's acknowledgment that resignation was stimulated by "The harassment, the hang-up calls and hostile behavior of Joanne and Corinne."

I would conclude that or the merits there was no substance in the sexual discrimination claim, were the merits before me. For the reasons I have given, I will enter a written order granting defendant's motion for summary judgment.

I thank you.

(The Court adjourned the proceedings at 9:50 a.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANITA M. SCHIRMER	:	CIVIL ACTION
	:	
v.	:	
	:	
EASTMAN KODAK COMPANY	:	NO. 86-3533

ORDER

For the reasons stated in the accompanying Memorandum, it is hereby ORDERED AND DIRECTED that defendant's motion to dismiss is GRANTED IN PART AND DENIED IN PART:

(1) defendant's motion to dismiss plaintiff's Title VII claim is DENIED;

(2) defendant's motion to dismiss plaintiff's claims under the First and Fourteenth Amendments and 42 U.S.C. §§1981 and 1982 is GRANTED.

APRIL 9, 1987

POLLAK, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Anita M. Schirmer	:	CIVIL ACTION
	:	
v.	:	
	:	
Eastman Kodak Compnay	:	NO. 86-3533

CIVIL JUDGMENT

AND NOW, this 15th day of June 1988, in accordance with the Court's Bench Opinion on defendant's motion sor summary judgment.

IT IS ORDERED that Judgment be and the same is hereby entered in favor of defendant Eastman Kodak Company and against plaintiff Anita Schirmer.

BY THE COURT:
A TRUE COPY CERTIFIED FROM XXXX
XXX ATTEST: Lewis C. Davis Deputy Clerk
XXXXXXXXX